U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: EAC 99 088 50968 Office: Vermont Service Center Date: JAN 1 1 2000

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(H)(i)(b)

IN BEHALF OF PETITIONER: Self-represented

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director of the Vermont Service Center. The matter is now before the Associate Commissioner on appeal. The appeal will be dismissed.

The petitioner is a software firm established in 1978 and seeks to employ the beneficiary for three years as a senior technical product support specialist in the H-1B classification for specialty occupations. In a decision issued April 18, 1999 (denial), the director determined the beneficiary did not have a baccalaureate degree or the equivalent and did not qualify to perform services in a specialty occupation. The petitioner appealed on May 9, 1999, (appeal) and placed a high value on the beneficiary's specialized knowledge in a letter from its Caché division dated April 29, 1999 (Caché letter). Additional evidence also included his work history (resumé).

Provisions of § 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(H)(i)(b), accord nonimmigrant classification to qualified aliens who are coming temporarily to the United States to perform services in a specialty occupation. The definition in § 214(i)(1) of the Act, 8 U.S.C. 1184(i)(1), describes a "specialty occupation" as one which requires theoretical and practical application of a body of highly specialized knowledge and attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Regulations in 8 C.F.R. 214.2(h)(4)(ii) define the term specialty occupation as:

> an occupation which requires theoretical and practical application of a body of highly specialized knowledge to fully perform the occupation in such fields of human endeavor, including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

The Act, in § 214(i)(2), 8 U.S.C. 1184(i)(2), exacts from a qualified alien coming to perform in a specialty occupation either:

> (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,

> (B) completion of the degree described in paragraph (1)(B) for the occupation, or
>
> (C)(i) experience in the specialty equivalent to the completion of such degree, and (ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

The alien must qualify to perform services in a specialty occupation by one of the criteria of 8 C.F.R. 214.2(h)(4)(iii)(C), namely,:

> *1.* Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
>
> *2.* Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
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> *3.* Hold an unrestricted State license, registration, or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
>
> *4.* Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

Appropriate to 8 C.F.R. 214.2(h)(4)(iii)(C)*(4)*, the Caché letter stated,

> [The beneficiary's] specialized knowledge in the older DTM dialect and experience in migrating customers [to the Caché product] is my principle [sic] justification for the H1B application....

The denial determined that the beneficiary's credentials evaluation and three years' study evidenced no degree. Though the Caché letter assigned a high value to his specialized knowledge for the petitioner's exigencies, it assayed no experience as equivalent to a degree. The Caché letter described, further, two areas of the beneficiary's experience and knowledge. It did not evaluate them as progressively responsible positions directly related to the specialty. The record, consequently, did not establish the

recognition of the beneficiary's expertise as equivalent to a degree. 8 C.F.R. 214.2(h)(4)(iii)(C)*(4)*.

Moreover, the determination of the equivalence of experience to a degree depends on 8 C.F.R. 214.2(h)(4)(iii)(D)*(5)* and one of its five elections, which states, as applicable to these proceedings,

> ... It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:
>
> *(i)* Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation;....

In respect to subsection *(i)*, no two documents from recognized authorities acknowledged the beneficiary's expertise in the terms which the regulation requires. That is, the record did not reveal the equivalent of a degree through experience gained in the specialty occupation and with those who have a degree or its equivalent therein. Though additional evidence in the Caché letter described the value of specialized experience of the beneficiary to the petitioner, it did not assess its equivalence with the missing baccalaureate. Cf. 8 C.F.R. 214.2(h)(iii)(C)*(2)*. The data laid no foundation, in any event, for progressively responsible positions directly related to the specialty.

The statute exacts experience in the specialty equivalent to the completion of a degree and the recognition of expertise through progressively responsible positions relating to it. See above, § 214(i)(2)(C)(i) of the Act, 8 U.S.C. 1184(i)(2)(C)(i). The proof did not satisfy its demands.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.